

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

----

THE PEOPLE,

Plaintiff and Respondent,

v.

RICKY VAN TRAN,

Defendant and Appellant.

C081941

(Super. Ct. No. 94F10752)

Defendant Ricky Van Tran was convicted of two counts of murder and one count of attempted murder and was found to have used a firearm in the commission of the offenses.<sup>1</sup> On February 17, 2012, he was sentenced to two terms of life without possibility of parole and a consecutive term of 20 years. In addition, the court imposed a

---

<sup>1</sup> On the court's own motion, we incorporate by reference the appellate record in *People v. Tran* (May 5, 2016, C070706) [nonpub. opn.].

\$10,000 restitution fine pursuant to subdivision (b) of Penal Code section 1202.4.<sup>2</sup> On December 8, 2015, defendant filed a motion for waiver or modification of the restitution fine. The motion was dismissed for lack of jurisdiction, and defendant now appeals.

Counsel was appointed to represent defendant on appeal. Counsel filed an opening brief setting forth the facts of the case and requesting this court to review the record and determine whether there were any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Counsel advised defendant of his right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant. We shall dismiss the appeal as taken from a nonappealable order.

“ ‘[G]enerally, a trial court lacks jurisdiction to resentence a criminal defendant after execution of sentence has begun. [Citation.]’ [Citations.] There are few exceptions to the rule.” (*People v. Turrin* (2009) 176 Cal.App.4th 1200, 1204.) No recognized exception applies here, as the trial court did not recall the sentence within 120 days of commitment of defendant to prison, and defendant has not and cannot reasonably argue that the restitution fine was not authorized or was the product of clerical error. (See *id.* at pp. 1205-1207.) Hence, the trial court was without jurisdiction to waive or modify the restitution fine. (*Id.* at p. 1208.)

“ ‘ “It is settled that the right to appeal is statutory and that a judgment or order is not appealable unless expressly made so by statute.” [Citations.]’ [Citation.]” (*Teal v. Superior Court* (2014) 60 Cal.4th 595, 598.) “Stated simply, a criminal appeal by the defendant may be taken only from ‘a final judgment of conviction’ (§§ 1237, subd. (a), 1466, subd. (2)(A)) or from ‘any order made after judgment, affecting the substantial rights’ of the party (§§ 1237, subd. (b), 1466, subd. (2)(B)).” (*People v. Gallardo* (2000)

---

<sup>2</sup> Undesignated statutory references are to the Penal Code.

77 Cal.App.4th 971, 980.) Here, appeal is not taken from the judgment of conviction.<sup>3</sup> And, “[s]ince the trial court lacked jurisdiction to [waive or] modify the restitution fine[], its order denying defendant’s motion requesting the same did not affect his substantial rights and is not an appealable postjudgment order. [Citation.] The appeal [must] be dismissed. [Citation.]” (*People v. Turrin, supra*, 176 Cal.App.4th at p. 1208; accord, *People v. Mendez* (2012) 209 Cal.App.4th 32, 34.)

**DISPOSITION**

The appeal is dismissed.

\_\_\_\_\_  
RAYE, P. J.

We concur:

\_\_\_\_\_  
MURRAY, J.

\_\_\_\_\_  
RENNER, J.

---

<sup>3</sup> The judgment of conviction, rendered on February 17, 2012, was affirmed by opinion filed on May 5, 2016. (*People v. Tran, supra*, C070706.)